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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3296 of 2012

Guru @ Gurusamy

... Appellant/Petitioner

vs.

1. Gopal

2. M/s.Reliance General Insurance Co. Ltd.,  
3<sup>rd</sup> Floor, No.23, Spurtank Road,  
Chetpet, Chennai-31.

(1<sup>st</sup> Respondent was set exparte before the  
Tribunal hence notice may be dispense with)

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.10.2009 and made in MCOP. No.552 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr.C.Parthiban  
For Mr.C.Prakasam

For Respondents : R1 - Ex-parte  
Mrs.Bhuvanasundari - R2

#### JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of compensation under the Impugned Award dated 20.10.2009 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore in MCOP.No.552 of 2008.

2.The Appellant sustained injuries on 19.02.2008 as a result of an accident caused by a load Auto bearing registration Nos.TN 23 AS 5778 owned by the first respondent and insured with the second respondent/insurance company.

3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore, in MCOP.No.552 of 2008 against the respondents seeking



compensation of Rs.2,00,000/- for the injuries sustained by him as a result of the accident.

4. The Motor Accident Claims Tribunal, under the impugned award, directed the respondents to pay the appellant/claimant a compensation of Rs.48,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs for the injuries sustained by him as a result of the accident caused by the aforesaid Auto.

5. The break-up details of the compensation awarded by the Tribunal in favour of the appellant/claimant are as follows:

| Sl.No. | Heads                                | Award passed by the Tribunal (Rs.) |
|--------|--------------------------------------|------------------------------------|
| 1      | Disability                           | 30,000/-                           |
| 2      | Pain and suffering                   | 10,000/-                           |
| 3      | Loss of earning                      | 6,000/-                            |
| 4      | Transportation and extra nourishment | 2,000/-                            |
|        | Total                                | 48,000/-                           |

6.The appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award dated 20.10.2009 passed in MCOP.No.552 of 2008, filed this Appeal seeking enhancemen.

7.Heard Mr.C.Parthiban, learned counsel for the Appellant/claimant and Mrs.Bhuvanasundarai, learned counsel appearing for the second respondent/Insurance company.

8.The appellant/claimant sustained a fracture of his skull and left shoulder as a result of the accident caused by the insured vehicle. He was a labourer (Coolie) at the time of the accident, which happened on 19.02.2008.

9. Before the Tribunal, the Appellant/claimant has filed four documents which were marked as Ex.A1 to Ex.A4 and two witnesses were examined on his side viz., Gurusamy, the Appellant/claimant himself as PW1 and Dr.Riyaz Ahemed, Doctor, who examined him as PW2. On the side of the second respondent/Insurance company, neither any witness was examined nor any document filed before the Tribunal.

10. The Doctor, who assessed the disability of the appellant/claimant, has been examined as a witness by the appellant/claimant as PW2 before the Tribunal. He has issued a disability certificate Ex.A3, which discloses that the



appellant/claimant has sustained 40% disability. However, the Tribunal has reduced the same to 25% under the impugned award. This Court is of the considered view that the Tribunal has rightly assessed the disability of the appellant/claimant at 25% after giving due consideration to the nature of injuries sustained by him. Therefore, the disability assessment made by the Tribunal at 25% is a correct assessment. However, the Tribunal has awarded only a compensation of Rs.30,000/- which in the considered view of this Court is low.

11. The year of the accident is 2008. After giving due consideration of the year of the accident, this Court deems it fit to enhance the disability compensation to Rs.50,000/- calculated at Rs.2,000/- per percentage of disability for the 25% disability. The Tribunal has awarded Rs.10,000/- towards pain and suffering, Rs.6,000/- towards loss of earning capacity to the appellant/claimant during the period of his treatment, which in the considered view of this Court, is a correct assessment and it does not call for any interference by this Court. However, the Tribunal has not awarded any compensation to the appellant/claimant towards attender charges. After giving due consideration to the nature of injuries sustained by the appellant / claimant, this Court awards a sum of Rs.5,000/- as compensation to the appellant/claimant towards attender charges. The Tribunal has also awarded only a meagre compensation of Rs.2,000/- towards transportation and extra nourishment, and therefore, it has to be enhanced to Rs.5,000/-. Accordingly, Rs.5,000/- is awarded as compensation towards transportation and extra nourishments by this Court. The Tribunal has also failed to award any compensation towards loss of amenities, which the appellant/claimant is legally entitled to as per the settled practice. Accordingly, a sum of Rs.5,000/- is awarded by this Court to the appellant/claimant towards loss of amenities.

12. For the foregoing reasons, the impugned award is modified in the following manner:

| Heads                                   | Amount awarded<br>by the Tribunal<br>(Rs.) | Modified Award<br>Amount<br>(Rs.) |
|-----------------------------------------|--------------------------------------------|-----------------------------------|
| Disability                              | 30,000/-                                   | 50,000/-                          |
| Pain and suffering                      | 10,000/-                                   | 10,000/-                          |
| Loss of earning                         | 6,000/-                                    | 6,000/-                           |
| Transportation and<br>extra nourishment | 2,000/-                                    | 5,000/-                           |
| Attender charges                        | ....                                       | 5,000/-                           |
| Loss of amenities                       | ....                                       | 5,000/-                           |
| Total                                   | 48,000/-                                   | 81,000/-                          |



Conclusion:

13. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.48,000/- to Rs.81,000/-. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent/insurance company is directed to deposit the entire award amount of Rs.81,000/-/- together with interest from the date of claim till the date of realisation and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.552 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the Appellant/claimant through RTGS within a period of four weeks, thereafter. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

rli

To

1.The Motor Accident Claims Tribunal  
(Chief Judicial Magistrate) Vellore.

2.The Section Officer,  
VR Section, High Court,  
Chennai.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 29045

C.M.A.No.3296 of 2012

BS (CO)  
GN(17/08/2021)